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COMMITTEE AGAINST TORTURE

Twenty-first session

SUMMARY RECORD OF THE PUBLIC PART* OF THE 357th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 17 November 1998, at 3 p.m.

Chairman: Mr. BURNS

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* The summary record of the closed part of the meeting appears as document CAT/C/SR.357/Add.1.

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The meeting was called to order at 3.04 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Conclusions and recommendations concerning the initial report of Iceland (CAT/C/37/Add.2)

1. Mr. SØRENSEN (Rapporteur for Iceland) read out the following text:

"1. The Committee considered the initial report of Iceland (CAT/C/37/Add.2) at its 350th, 351st and 357th meetings, held on 12 and 17 November 1998 (CAT/C/SR.350, 351 and 357) and has adopted the following conclusions and recommendations:

A. Introduction

2. The Committee thanks the Government of Iceland for its frank cooperation and its representative for the constructive dialogue. It considers that the initial report of the State Party fully conforms with the Committee's general guidelines for the preparation of reports and provides detailed information on the implementation of each provision of the Convention.

B. Positive aspects

3. The Committee notes with satisfaction that Iceland has made the declarations necessary to recognize the Committee's competence under articles 21 and 22 of the Convention.

4. It also notes with satisfaction that the amendments to the Constitution adopted in 1995 enhance protection of human rights and establish, in particular, the absolute prohibition of torture.

5. The Committee commends the Icelandic authorities for the enactment of legislation and rules on the rights of arrested persons, interrogations by the police, and the protection of persons committed to psychiatric hospitals against their will.

C. Subjects of concern

6. The Committee is concerned over the fact that torture is not considered as a specific crime in the penal legislation of the State Party.

7. It is equally concerned about the use of solitary confinement, particularly as a preventive measure during pre-trial detention.

D. Recommendations

8. The Committee recommends that:

(a) Torture as a specific crime be included in the penal legislation of Iceland;

(b) The Icelandic authorities review the provisions regulating solitary confinement during pre-trial detention in order to reduce considerably the cases to which solitary confinement could be applicable;

(c) The legislation concerning evidence to be adduced in judicial proceedings be brought in line with the provisions of article 15 of the Convention so as to explicitly exclude any evidence made as a result of torture;

(d) Information on constraining measures applied in psychiatric hospitals be included in Iceland's next periodic report."

2. The conclusions and recommendations as a whole were adopted.

Third periodic report of Hungary (CAT/C/34/Add.10; CAT/C/17/Add.8, HRI/CORE/1/Add.11) (continued)

3. At the invitation of the Chairman, the members of the delegation of Hungary resumed their places at the Committee table.

4. The CHAIRMAN invited the Hungarian delegation to reply to the questions asked by Committee members at the previous meeting.

5. Mr. NÁRAY (Hungary), replying to the question concerning the status of the Convention in domestic legislation, said that in the event of a conflict between domestic legislation and international law, the latter prevailed, in conformity with the Constitution.

6. The Ombudsman, as an institution, had been established following the example of European countries, such as Sweden, Norway and Denmark, and with the support of the Council of Europe. Thus regulations in that area were in line with those of other European countries. The measures available to the Ombudsman included making recommendations on the basis of inquiries and reporting to the Chief Public Prosecutor or even to the Constitutional Court. His recommendations were accepted by the institutions concerned, which showed that the Ombudsman enjoyed a high reputation in the country thanks to his effectiveness. Some of the reports drawn up by the Ombudsman could be consulted by Committee members wishing to have further details about his activities. All citizens were entitled to approach either the Ombudsman or the Constitutional Court directly, if they felt that their rights under the Convention had been infringed.

7. With regard to the follow-up to the recommendations of the European Committee for the Prevention of Torture after the latter's first visit to Hungary, Committee members might note that a second visit was scheduled for 1999.

8. Hungary's Criminal Code complied with article 4 of the Convention and all the country's international obligations.

9. The "geographical" reservation to the Convention relating to the Status of Refugees had been withdrawn on 1 March 1998, so that henceforth all refugees without distinction enjoyed the same treatment.

10. There was no discrimination either against aliens with regard to detention. No aliens applying for asylum in Hungary or for refugee status were detained, unless they had committed an offence. If they were unable to prove their identity, however, they might be sent to a specialized centre, which was not a detention centre and which they were free to leave. As far as children were concerned, no child under 14 years of age could be detained.

11. With regard to Roma detainees, it was not easy to ascertain how many there were nor what proportion of the prison population they accounted for, since there were no specific statistics concerning them. The Hungarian delegation was aware that NGOs and other sources had reported large numbers of such cases, but it should be emphasized that they were exposed to no discrimination. That was an incontrovertible fact, even though it might be true that the proportion of Roma in detention was quite high. There were still problems, of course, but the law, including the Constitution, applied to all citizens, with no discrimination whatever.

12. In addition, all detainees regularly received information regarding their rights, in Hungarian or in other languages (including German, French, Russian, Turkish and Romanian), based on the Convention against Torture and other United Nations human rights instruments.

13. Returning to the question of refugees, it was worth pointing out that the arrival of massive numbers of migrants - 150,000 in 10 years - constituted a real challenge for Hungary. It was no easy matter to cope with such an influx, even though the related problems were regularly discussed with UNHCR and other organizations. Aliens were free to leave the centres where they were housed. Those who had committed offences under Hungarian law were detained in specialized centres. One of the chief problems arose from the fact that Hungary was not an end-destination country, but rather a place of transit, subject to pressures from certain States urging it to take action to stop the flow of migrants. Only a small proportion of the latter were real refugees, in the sense of the Geneva Convention; most of them were merely seeking temporary shelter (for instance, following natural disasters or wars). A report recently submitted to the UNHCR containing precise details in that respect could be consulted by members of the Committee.

14. In reply to the question concerning extradition, he said that as a rule Hungarians could not be extradited to a third country, except in certain cases, such as war crimes or crimes against humanity.

15. With regard to building up awareness about the principles contained in the Convention and other instruments and the training given in that respect, the Hungarian delegation held documentation at the Committee's disposal showing that the matter was taken seriously. For instance, a training programme, which was compulsory for prison staff, included four hours devoted exclusively to the Convention against Torture. Among medical staff, both doctors and nurses received satisfactory vocational training, in line with the best European traditions.

16. Referring to the application of article 12 of the Convention, he said that, as indicated in paragraph 53 of the report, the Chief Public Prosecutor had issued a circular calling the attention of all public prosecutors to the need to apply the provisions of both domestic and international law prohibiting torture. Moreover, the public prosecutors themselves carried out investigations, which gave any potential plaintiff an opportunity to clear up any doubts, concerning possible infringements of the law in particular.

17. The difference between civil and military public prosecutors could be said to be a matter of jurisdiction, with the military prosecutors dealing with cases concerning military staff that came up in the military courts and the civil prosecutors dealing with cases involving civilians that concerned the civil courts. On the other hand, there was no difference between them with regard to the principle of judgement on merits.

18. The physical and mental rehabilitation and financial compensation of torture victims was expressly provided for in Hungarian law, in full compliance with the provisions of the Convention. In that respect, the Hungarian delegation assured the Committee that it would submit to the competent authorities the Committee's useful suggestion concerning Hungary's participation in the United Nations Voluntary Fund for Victims of Torture.

19. He then confirmed that a number of investigations had been carried out into offences committed by law enforcement officials. About 20 per cent of the investigations had been followed by judicial proceedings and, in half those cases, to convictions. Any allegation to the effect that evidence against law enforcement officials was sometimes hidden during an investigation was unfounded. Such a possibility appeared altogether unlikely, especially in view of the close watch kept by the Public Prosecution Department on the conduct of investigations.

20. Currently 829 women were being held in detention in Hungary, compared with 13,433 men. They were held in separate establishments and the personnel in women's prisons was entirely female. No case of sexual abuse had been reported. On the other hand, the situation in refugee centres was far from satisfactory in all cases, especially owing to overcrowding. It was possible in that case that women and men had to share accommodation, but it was certainly not the rule.

21. Lastly, he said he would draw the attention of the Hungarian authorities to the need to improve the Hungarian version of the Convention, which was admittedly inaccurate.

22. Mr. GONZALES POBLETE, recalling that the duty of military courts was to judge military offences, such as desertion, wondered if he had understood correctly that inquiries into allegations of torture in Hungary were conducted by military prosecutors, insofar as such cases should not come within their jurisdiction. He would also like to know how the right of torture victims to compensation, as provided for in article 14 of the Convention, was enforced in practice and whether victims could undertake civil proceedings against the actual State.

23. Mr. NÁRAY (Hungary) replied that only acts of torture committed by the military were tried before military courts. The victims of acts of torture committed by State officials could apply to the Hungarian State for redress, either by starting separate civil proceedings or in the course of criminal proceedings undertaken against the official concerned. Both possibilities were allowed.

24. Mr. MAVROMMATIS (Rapporteur for Hungary) was not convinced that the combined application of articles 122 and 123 of the Criminal Code were enough to ensure full compliance with the provisions of the Convention. It was inadmissible, for instance, that a police officer who had committed acts of violence should be punished only once it had been established that he was aware of having committed an offence. There was no circumstance on earth, it should be repeated, that could justify torture. In that respect, the Hungarian delegation might be good enough to supply the Committee with explanations regarding the many allegations of ill-treatment and brutality, especially during police custody, reported by NGOs.

25. Mr. NÁRAY (Hungary) replied that in addition to article 123 of the Criminal Code, further police regulations applied and that, in any case, the Convention was directly enforceable by the courts. With regard to the allegations of ill-treatment which had been referred to, the authorities were very keen to improve the situation and the introduction of a sophisticated legal system should make it possible to prevent most occurrences of that kind.

26. Mr. SØRENSEN welcomed the Hungarian delegation's positive response regarding the possibility of contributing to the United Nations Voluntary Fund for Victims of Torture. Returning to the question he had asked at the previous meeting, he said he would like to know exactly how the Hungarian authorities ensured that all refugees housed in centres were allowed one hour of outdoor exercise every day. Furthermore, was the right to education of the 263 children living in centres for asylum seekers guaranteed, and if so, how?

27. Mr. NÁRAY (Hungary) repeated that the centres for asylum seekers were not detention centres and that the persons residing there were free to leave. Mr. Sørensen's question concerning outdoor exercise did not therefore make sense. On the other hand, the education of children was a real problem. It was very difficult to provide courses in the mother-tongues of all refugees. Some way should certainly be found of overcoming the practical difficulties which prevented such children from receiving proper education.

28. Mr. ZUPANČIČ said that, according to information supplied by the World Organization against Torture, article 139, paragraph 1 (b), of the Code of Criminal Procedure authorized prosecutors to terminate complaints in the absence of evidence for ill-treatment inflicted by police officers. Yet, under article 12 of the Convention, competent authorities, in that case the prosecutors, had to proceed immediately to an investigation in response to allegations of torture. It would be useful, therefore, for Hungary to explain that point in more detail in its next periodic report.

29. He was also surprised that according to some official statistics, also referred to by the World Organization against Torture, 60 per cent of all offences were committed by Roma. Considering the latter made up only 7 per cent of the total population, that meant they committed nine times more offences than other Hungarians and he would have liked more details in that respect.

30. Mr. NÁRAY (Hungary) said that prosecutors in Hungary were completely independent of the police. In the event of a complaint, they proceeded to an investigation and if the evidence gathered was insufficient, they were authorized to close the case. Their decision, however, was not final. If a plaintiff had doubts regarding the impartiality of the procedure applied, he could either approach the Ombudsman or appeal to the Constitutional Court.

31. With regard to the Roma, he was unable to confirm those particular statistics, but he did not believe any discrimination was practised against the Roma. It should be understood that the latter did not like to be considered as a separate minority within the population. The problem was admittedly complex, but by no means new.

32. The CHAIRMAN said it would be worth finding out whether the statistics were correct, and pointed out that the question put by Mr. Zupančič in fact concerned the way the statistics had been arrived at. He thanked the Hungarian delegation for the replies they had given to the questions raised by the Committee and invited it to refer any outstanding matters to which replies had not been provided to the Hungarian Government.

The public part of the meeting was suspended at 4.35 p.m. and resumed at 5.20 p.m.

ORGANIZATIONAL AND OTHER MATTERS (continued)

33. Mr. Burns returned to the chair.

Draft code of conduct for United Nations representatives and experts

34. The CHAIRMAN said that the United Nations secretariat had sent the Committee's secretariat a draft code of conduct, in English only, governing the behaviour of United Nations official representatives and experts towards civil society, which imposed certain restrictions. For instance, the officials concerned should be barred from accepting any distinctions, decorations or titles. He asked Committee members to study the draft as soon as possible in order to make comments before the end of the session which could be forwarded to the Secretary-General.

Measures required with regard to States parties whose reports were long overdue

35. The CHAIRMAN said that the question was whether Committee members wished to introduce new measures for countries whose reports were long overdue - 10 years in some cases - or whether they preferred simply to continue bringing cases to the attention of the General Assembly and the States parties, as in the past.

36. Mr. BRUNI (Secretary of the Committee) reminded members of the current procedure. When a State party's report was more than three years overdue, the Committee Chairman tried to arrange a personal interview with the State's permanent representative in Geneva or wrote to his minister for foreign affairs regarding the matter. The interview system had worked reasonably well until the rapid increase in the number of overdue reports had made it impracticable. Since then, the secretariat had been regularly sending reminders to the States parties concerned. The method was sometimes successful, since 15 periodic reports would be submitted for the Committee's consideration in 1999.

37. The CHAIRMAN said that the Committee would return to the matter at its following meeting.

The list of issues raised by committee members during consideration of the reports submitted by States parties

38. The CHAIRMAN said that the secretariat had drawn up a list of issues on which committee members generally asked State parties to provide information under the article 19 procedure. Committee members were asked to look at the list and remove or add items as they thought fit before the end of the session.

The public part of the meeting rose at 5.40 p.m.